

No. 15243

United States
Court of Appeals
for the Ninth Circuit

ROBERT C. KIRKWOOD, Controller of the State
of California,

Appellant,

vs.

LEE ARENAS, RICHARD BROWN ARENAS
and UNITED STATES OF AMERICA,

Appellees.

Transcript of Record

Appeals from the United States District Court for the
Southern District of California,
Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellee United States of America:

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United States District Court, Southern District of
California, Central Division

No. 1321-WM Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER TO SHOW CAUSE

To the United States of America and to the State of California: Upon reading and filing the verified petition of Lee Arenas and Richard Brown Arenas, and good cause appearing,

Now, Therefore, upon application of Irl Davis Brett, attorney for said petitioners,

It Is Ordered that the United States of America and the State of California, and each of them, be and appear before this Court in court room No. 2, second floor, 312 North Spring Street, Los Angeles, California, before the Honorable William C. Mathes, United States District Judge, on January 9, 1956, at the hour of 2 o'clock p.m. then and there to show cause, if they, or any of them, have, why the prayer of the petition of said petitioners Lee Arenas and Richard Brown Arenas should not be granted.

It Is Further Ordered that service of this Order to Show Cause together with two copies of the Petition upon which it is issued upon the United States Attorney at Los Angeles, [2*] presently counsel of record in this cause for the United States of America, on or before 5:00 p.m. December 7th, 1955, shall constitute sufficient and timely service.

It Is Further Ordered that service by mail of this Order to Show Cause together with a copy of the petition upon which it is issued upon the Governor of the State of California at his official office in Sacramento, California (or upon any agent which he has lawfully and expressly designated as the agent upon which service of process as against the State of California shall be made), deposited in the United States mail on or before 5:00 p.m. on 7th of December, 1955, shall constitute sufficient and timely service.

Dated: December 2, 1955.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed December 5, 1955. [3]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

United States District Court, Southern District of
California, Central Division

No. 6221-WM Civil

ELEUTERIA BROWN ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER TO SHOW CAUSE

To the United States of America and to the State of California: Upon reading and filing the verified petition of Richard Brown Arenas, and good cause appearing,

Now, Therefore, upon application of Irl Davis Brett, attorney for said petitioner,

It Is Ordered that the United States of America and the State of California, and each of them, be and appear before this Court in court room No. 2, second floor, 312 North Spring Street, Los Angeles, California, before the Honorable William C. Mathes, United States District Judge, on January 9, 1956, at the hour of 2 o'clock p.m. then and there to show cause, if any they, or any of them, have, why the prayer of the petition of said petitioner Richard Brown Arenas should not be granted.

It Is Further Ordered that service of this Order to Show Cause together with two copies of the

Petition upon which it is issued upon the United States Attorney at Los Angeles, presently counsel of record in this cause for the United States of America, [4] on or before 5:00 p.m. December 7th, 1955, shall constitute sufficient and timely service.

It Is Further Ordered that service by mail of this Order to Show Cause together with a copy of the petition upon which it is issued upon the Governor of the State of California at his official office in Sacramento, California (or upon any agent which he has lawfully and expressly designated as the agent upon which service of process as against the State of California shall be made), deposited in the United States mail on or before 5:00 p.m. on 7th of December, 1955, shall constitute sufficient and timely service.

Dated: December 2, 1955.

/s/ WM. C. MATHES,

United States District Judge.

[Endorsed]: Filed December 5, 1955. [5]

[Title of District Court and Cause.]

No. 1321-WM Civil

PETITION FOR ALLOCATION OF FUNDS ON DEPOSIT IN THE REGISTRY OF THE COURT AS BETWEEN LEE ARENAS AND RICHARD BROWN ARENAS; FOR DETERMINATION OF TAXES, IF ANY, WHICH ARE A LIEN UPON FUNDS IN THE REGISTRY OF THE COURT; FOR AN ORDER DIRECTING PAYMENT OF APPROVED CLAIMS AGAINST THE ESTATE OF ELEUTERIA BROWN ARENAS, DECEASED, AND FOR DISTRIBUTION OF FUNDS ON DEPOSIT IN THE REGISTRY OF THE COURT, AND OTHER RELIEF

Come Now petitioners Lee Arenas and Richard Brown Arenas and petition this Honorable Court and allege as follows:

I.

Petitioners are each enrolled members of the Palm Springs Band of Mission Indians.

II.

That on the 24th day of February, 1949, petitioner Lee Arenas received a trust patent to the following described lands which are situated within the Palm Springs Reservation in the City of Palm Springs, County of Riverside, State of California, to wit:

Parcel (a) Lot 46, Section 14, T4S, R4E, S.B.B.&M., comprising 2 acres; [6]

Parcel (b) Tract No. 39, Section 26, T4S, R4E, S.B.B.&M., comprising 5 acres;

Parcel (c) $E\frac{1}{2}$ $SW\frac{1}{4}$ of the $NW\frac{1}{4}$ and the $SE\frac{1}{4}$ $NW\frac{1}{4}$, $NW\frac{1}{4}$ and the $SW\frac{1}{4}$ of the $NE\frac{1}{4}$ of the $NW\frac{1}{4}$, all in Section 26, T4S, R4E, S.B.B.&M., comprising 40 acres.

III.

That prior to May 9, 1927, and at all times up to the date of her death on March 26, 1937, within the State of California, Guadalupe Rice Arenas was the lawful wife of petitioner Lee Arenas. That on the 24th day of February, 1949, the United States of America issued to the unnamed heirs and devisees of Guadalupe Rice Arenas a trust patent to the following described lands within the Palm Springs Reservation in the City of Palm Springs, County of Riverside, State of California, to wit:

Parcel (a) Lot 47, Section 14, T4S, R4E, S.B.B.&M., comprising two acres;

Parcel (b) Tract 40, Section 26, T4S, R4E, S.B.B.&M., comprising 5 acres;

Parcel (c) $SE\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., comprising 40 acres.

IV.

That attorneys John W. Preston, Oliver O. Clark and David D. Sallee represented petitioner Lee Arenas in the commencement of the litigation in

this proceeding entitled Lee Arenas, Plaintiff, vs. United States of America, Defendant, and numbered 1321-WM Civil. That on April 6, 1951, a Judgment and Supplemental Decree was entered herein adjudging that said attorneys were jointly entitled to a judgment for legal services rendered by them in the obtaining of the allotments and the trust patents to Lee Arenas and to the heirs and devisees of Guadalupe Rice Arenas in the principal amount of \$90,000.00 [7] together with costs in the amount of \$258.57 and that a lien in the nature of a charging lien be impressed upon said lands and the whole thereof to secure the payment of said judgment. That such judgment became final.

V.

That pursuant to the original judgment in this cause directing and requiring the Secretary of the Interior of the United States to make allotments to Lee Arenas and the heirs and devisees of Guadalupe Rice Arenas, Deceased, and to issue the trust patents which are referred to and described in paragraphs II and III hereof, said allotments were made effective and said trust patents were issued as effective nunc pro tunc so as to vest and become effective as of May 9, 1927, which was the date finally adjudicated as between the United States of America and the allottees Lee Arenas and Guadalupe Rice Arenas as the date of their selections for allotment of said lands which are described and conveyed in said trust patents.

VI.

That Guadalupe Rice Arenas died intestate and the probate of her estate and the determination of her heirs was vested by law in and was determined by the Secretary of the Interior of the United States through his legally appointed Examiner of Inheritance, J. Lee Rawhauser. That said determination was made pursuant to the provisions of Section 1 of the Act of June 25, 1910, 36 Stat. 855, Title 25, U.S.C.A., Section 372; that said determination became final on July 25, 1949, and in said Order Determining Heirship, said Examiner of Inheritance determined and found that petitioner Lee Arenas and one Eleuteria Brown Arenas (now deceased) were the heirs at law entitled to succeed to the trust property of Guadalupe Rice Arenas; that each was entitled to an undivided one-half interest in the lands to which said Guadalupe was entitled; and that Eleuteria was the [8] adopted daughter of petitioner Lee Arenas and said Guadalupe.

VII.

That on or about November 8, 1949, and pursuant to said Order Determining Heirship, the United States of America issued a trust patent to Eleuteria Brown Arenas for an undivided one-half interest in Guadalupe's allotment which is described in paragraph III hereof and a trust patent to petitioner Lee Arenas for an undivided one-half interest therein. That said Determination of Heirship was contested and appealed by petitioner Lee Arenas but was affirmed on appeal by the Court of

Appeals for the Ninth Circuit on May 13, 1952, in a decision reported as *Arenas v. United States* in 197 Fed. 2d, 418, et. seq. and has become final.

VIII.

That subsequent to said Determination of Heirship, this Court made and entered an Order, Judgment and Decree; that the burden and obligation of the decree in case 1321-WM Civil run against the lands which are described in paragraphs II and III hereof so that the interest of petitioner Lee Arenas would be subject to three-fourths of said obligation and the interest of Eleuteria Brown Arenas therein would be subject to one-fourth of said obligation, and further provided, inter alia, that jurisdiction of this proceeding was retained to so adjust the lands and proceeds, or the lands or the proceeds, remaining after satisfaction of said judgment as to cause the Lee Arenas lands to bear three-fourths of the burden and the Eleuteria Brown Arenas lands to bear one-fourth of the burden of the judgment.

IX.

That upon application of said attorneys Preston, Clark and Sallee, a supplemental order, judgment and decree was entered herein directing the enforced sale by a Commissioner [9] appointed by this Court of the lands described in paragraphs II and III hereof (or so much thereof as should be required if less than all thereof would bring a price sufficient to satisfy such judgment) to enforce payment of and satisfy the lien and judgment in favor

of said attorneys together with accrued interest and costs.

X.

That with the consent and approval of the United States of America, the lands inherited from Guadalupe Rice Arenas were partitioned by deeds executed by the respective parties, one to the other, as follows:

To petitioner Lee Arenas the N $\frac{1}{2}$ of Lot 47 in Section 14; the N $\frac{1}{2}$ of Lot 40 in Section 26; and the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26.

To Eleuteria Brown Arenas the S $\frac{1}{2}$ of Lot 47 in Section 14; the S $\frac{1}{2}$ of Lot 40 in Section 26; and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ in Section 26.

XI.

That under compulsion of said Order, Judgment and Decree, and in order to avoid the hazard of a possible loss of all of said allotted lands through foreclosure sale, petitioner Lee Arenas consummated three private sales of certain portions of his trust patented lands which are described in paragraph II hereof, and also sold at private sale the following portion of his lands inherited from his deceased wife Guadalupe Rice Arenas, to wit:

The W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M.

That there was deposited in the registry of this Court as the net proceeds of such sales the sum of \$122,147.83.

XII.

That the United States of America and petitioner Lee Arenas appeal from the Order, Judgment and Decree of this [10] Court in this cause allowing interest upon such judgment to attorneys Preston, Clark and Sallee and said appeal is now pending and undetermined before the Court of Appeals for the Ninth Circuit.

XIII.

That Eleuteria Brown Arenas died intestate in Riverside County, California, on April 26, 1954, and pursuant to the provisions of the law which are referred to and described in paragraph VI hereof, the Secretary of the Interior of the United States, through his regularly appointed Examiner of Inheritance, J. Lee Rawhauser, found and determined that petitioner Richard Brown Arenas was the surviving son of and sole heir at law of Eleuteria Brown Arenas and entitled to inherit her allotted lands including her interest in the lands inherited by her from Guadalupe Rice Arenas, deceased, which are described in paragraph X hereof. That said Order Determining Heirs approved and ordered paid the following claims payable to the following named creditors in the following amounts:

Wiefels and Son, Funeral Directors, Box
359, Palm Springs, California.....\$ 463.66
Mrs. Terry M. Lamb, 3826 East First
Street, Long Beach 3, California..... 9,620.00
plus 6% interest from May 1, 1954

Bank of America, National Trust and Savings Association, Palm Springs, California (for promissory note dated February 10, 1954)	300.00
plus 6% interest from February 10, 1954	
Bank of America, National Trust and Savings Association, Palm Springs, California, balance due on promissory note dated January 7, 1954, in amount of \$321.60; present balance due unknown, since Sacramento Area Office has made payments thereon subsequent to decedent's death	
Hatchett's Market, Palm Springs, California	6.18
Desert Lock and Key, Palm Springs, California	15.51
California Electric Power Company, Palm Springs, California	16.39
Palm Springs Water Company, Palm Springs, California	4.60
Music and Appliance Company, Palm Springs, California	28.62

That further reference will be made to the allowed claim of Mrs. Terry M. Lamb in paragraph XXII following. That said order became final on August 7, 1954.

XIV.

That by subsequent orders, judgments and decrees, this Court has caused to be paid and disbursed from said sum of \$122,147.83 the total sum

of \$101,922.03, which disbursements have fully satisfied, paid and discharged the judgment and lien of attorneys, Preston, Clark and Sallee except as to their claim for accrued interest, and this Court has ordered and required that the sum of \$20,225.80 be retained in the registry to secure payment of such interest if, upon final judgment, the order and decree that such attorneys have interest be affirmed. That such disbursements have also fully paid, satisfied and discharged a fee for services rendered by counsel for petitioner Lee Arenas, Irl Davis Brett, Esq., for procuring and consummating such private sales including the legal steps taken in this cause to obtain authorization and approval thereof and all costs of suit in this cause excepting costs, if any, which will arise out of such pending appeal, which costs are also secured by the retained deposit heretofore described.

XV.

That by reason of the death of Eleuteria Brown Arenas and the inability of anyone to consummate private sales of her allotted lands, the distribution of funds described in paragraph XIV hereof was entirely made from funds derived from sales of [12] petitioner Lee Arenas' allotted lands and he thereby became entitled to repayment to the extent that such disbursement was in payment and satisfaction of the obligation of Eleuteria Brown Arenas.

XVI.

That in order to consummate the private sales heretofore described and set forth, petitioner Lee

Arenas obtained an order and judgment of this Court approving such sales by the terms of which it was provided, inter alia, that the lien of the judgment and supplemental decree in favor of attorneys Preston, Clark and Sallee and all other lawful and outstanding liens upon the lands so sold were transferred from said lands to the funds deposited in the registry of the Court. That in order to consummate said sales it was necessary that petitioner Lee Arenas obtain and supply to the purchasers policies of title insurance issued by private title insurance companies operating and doing business in the County of Riverside, California, and in order to obtain and supply such policies of title insurance it was necessary for petitioner Lee Arenas to and he did obtain releases of any claimed estate tax lien of the United States of America affecting the lands described in paragraphs III and X hereof which he had inherited from his deceased wife Guadalupe Rice Arenas together with a release of the State Inheritance Tax lien, if any, in favor of the State of California upon said lands, conditioned that said liens, if any there were, be transferred and affixed to the funds deposited in the registry of the Court.

XVII.

That subsequent to the vesting of title in him, petitioner Richard Brown Arenas, under compulsion of said charging lien upon the lands inherited by him through his mother Eleuteria Brown Arenas from his grandmother Guadalupe Rice Arenas which are described in paragraphs III and X

hereof, consummated [13] three private sales of certain portions of said trust patented lands which are described in paragraphs III and X hereof consisting of:

The N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M.

That there was deposited in the registry of this court in this cause as the net proceeds of such sales the sum of \$29,419.70.

XVIII.

That in addition to such private sales, and through inadvertence and mistake in believing that the lands described in this paragraph were a portion of his inheritance derived from Guadalupe Rice Arenas, petitioner Richard Brown Arenas, under compulsion of another charging lien in favor of attorneys Preston, Clark and Sallee upon the lands inherited by him from his mother Eleuteria Brown Arenas but not inherited from his grandmother Guadalupe Rice Arenas, which charging lien was a part and portion of a judgment rendered by this Court in a case entitled Eleuteria Brown Arenas, Plaintiff, vs. United States of America, Defendant, and numbered 6221-WM Civil, petitioner Richard Brown Arenas consummated another private sale of certain trust patented lands within the Palm

Springs Indian Reservation which were originally trust patented to his mother, to wit, the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., and there was deposited in the registry of this Court in that cause as the net proceeds of such sale the sum of \$7,334.40. That for convenience, such sale will be referred to herein as the Plascjak sale.

XIX.

That at the date of the death of Guadalupe Rice Arenas, [14] March 26, 1937, the selections for allotment of Palm Springs Indian Reservation lands which had been made by various enrolled members of said bank in 1923 and in 1927, including the selection made by Guadalupe Rice Arenas, had been rejected by the Secretary of the Interior of the United States. That all judicial decisions and administrative actions through which the allotment was approved for and a trust patent was issued to the heirs and devisees of Guadalupe Rice Arenas occurred and took place after her death. That if the right to succession of trust patented Indian lands in the Palm Springs Indian Reservation is taxable by the United States of America and/or the State of California, such rights to tax are derived from judicial decisions made and entered after the death of Guadalupe Rice Arenas.

XX.

That petitioners are informed and believe and upon such ground allege that the United States of America claims that the rights of petitioner Lee

Arenas to succeed to his one-half interest in the trust patented lands which became his one-half share of the allotment to his deceased wife, Guadalupe Rice Arenas, is subject to an estate tax under allegedly applicable laws of the United States and that the right of the deceased adopted daughter, Eleuteria Brown Arenas (which right has now been succeeded to by petitioner Richard Brown Arenas), to succeed to the other one-half of the trust patented lands derived from the allotment to Guadalupe Rice Arenas is likewise subject to an estate tax under said laws and that the United States of America further contends that the right of Richard Brown Arenas to succeed to the rights of Eleuteria Brown Arenas in the lands which said Eleuteria had in turn inherited from Guadalupe Rice Arenas is likewise subject to an estate tax under said laws. That if said claims are established, they are a lien upon the funds now on deposit in the registry of the court pursuant to the judgments, orders and decrees heretofore made by this Court [15] in authorizing and approving the sales hereinbefore described. That petitioners each deny that any such estate tax is leviable or lawful and allege that since such succession rights are solely and exclusively derived through the General Allotment Act of 1887 (the Act approved February 8, 1887, chapter 119, paragraph 5; 24 Stat. 389; Title 25 U.S.C., Section 348) and the Mission Indian Act of 1891 (the Act approved January 12, 1891; 26 Stat. 712) both as amended, the rights of petitioners to such inherited

allotted lands are not derived through general succession but through special succession in fulfillment of the obligation of the United States that the restricted trust patented property shall be held free of all charge and encumbrance whatsoever, whether voluntary or involuntary, made or incurred by the trust patentee. That the conversion of a portion of such trust patented inherited lands through the sales thereof with the approval of this Court and the United States under compulsion of the decrees of this Court as heretofore described and set forth did not change the trust character of or limitations upon the funds into which they were converted, and which funds are now on deposit in the registry of the Court in this action, and that no succession tax or any other tax by the United States of America could be levied upon or affixed to or has been levied upon or affixed to such trust restricted funds.

XXI.

That petitioners are informed and believe and upon such ground allege that the State of California claims that the rights of petitioner Lee Arenas to succeed to his one-half interest in the trust patented lands which became his one-half share of the allotment to his deceased wife, Guadalupe Rice Arenas, is subject to an inheritance tax under allegedly applicable laws of the State of California and that the right of the deceased adopted daughter, Eleuteria Brown Arenas (which right has now been succeeded to by [16] petitioner Richard Brown Arenas), to succeed to the other one-half of the

trust patented lands derived from the allotment to Guadalupe Rice Arenas is likewise subject to an inheritance tax under said laws and that the State of California further contends that the right of Richard Brown Arenas to succeed to the rights of Eleuteria Brown Arenas in the lands which said Eleuteria had in turn inherited from Guadalupe Rice Arenas are likewise subject to an inheritance tax under said laws. That if said claims are established, they are a lien upon the funds now on deposit in the registry of the Court pursuant to the judgments, orders and decrees heretofore made by this Court in authorizing and approving the sales hereinbefore described. That petitioners each deny that any such inheritance tax is leviable or lawful and allege that since such succession rights are solely and exclusively derived through the General Allotment Act of 1887 (the Act approved February 8, 1887, chapter 119, paragraph 5; 24 Stat. 389; Title 25 U.S.C., Section 348) and the Mission Indian Act of 1891 (the Act approved January 12, 1891; 26 Stat. 712) both as amended, the rights of petitioners to such inherited allotted lands are not derived through general succession but through special succession in fulfillment of the obligation of the United States that the restricted trust patented property shall be held free of all charge and encumbrance whatsoever, whether voluntary or involuntary, made or incurred by the trust patentee. That the conversion of a portion of such trust patented inherited lands through the sales thereof with the approval of this Court and the United States under

compulsion of the decrees of this Court as heretofore described and set forth did not change the trust character of or limitations upon the funds into which they were converted, and which funds are now on deposit in the registry of the Court in this action, and that no succession tax or any other tax by the State of California could be levied upon or [17] affixed to or has been levied upon or affixed to such trust restricted funds. Petitioners further allege that the adoption of the laws governing heirship of the State of California as the requirement for inheritance of said allotted trust patented lands under the provisions of the Acts of Congress immediately heretofore referred to and described did not make such lands subject to a State inheritance tax nor make inheritance thereto subject to the laws of the State of California but that, to the contrary, such adoption was merely a convenient means for the Congress to express its will and was descriptive only of the will of Congress as expressed in such legislation.

XXII.

That since the allowance of the claim in favor of Mrs. Terry M. Lamb as set forth in paragraph XIII. page 6, lines 20 to 22, was approved and ordered paid in the administrative probate of the estate of Eleuteria Brown Arenas, payments have been made by the Indian Office of the United States out of funds accruing in favor of petitioner Richard Brown Arenas so that the unpaid balance of principal is now the sum of \$8,657.96 plus interest at 6%

per annum from October 21, 1955, until paid. That in addition to the accrual of interest, said claim arises out of a purchase contract of an improved residential structure and may be subject to forfeiture as against petitioner Richard Brown Arenas if not paid in accordance with the existing contract between Mrs. Lamb and said decedent. That for such reason petitioner Richard Brown Arenas alleges that Mrs. Lamb should have priority payment thereon.

XXIII.

That during the course of this litigation and after the finality of the judgments affixing liens upon the properties heretofore described, Irl Davis Brett, Esq., has been and is the attorney for petitioners, and each of them. That he has been [18] fully paid for all services rendered excepting as follows: that at the request of petitioner Lee Arenas he has advanced and expended in behalf of said petitioner the sum of \$92.38 for filing fees in the District Court and in the Court of Appeals for the Ninth Circuit and for the printing of a brief in behalf of petitioner Lee Arenas in the proceeding upon appeal, No. 14555 which involves the pending appeal of the United States of America and of Lee Arenas from that portion of the decree of this Court which awarded petitioners Preston, Clark and Sallee interest upon the principal and costs as set forth in the judgment and supplemental decree in this cause which was entered herein April 6, 1951, and in which such parties also have appealed from that portion of said judgment which awarded the sum

of \$468.19 together with interest thereon at 7% per annum from January 1, 1952, until paid to John W. Preston. That upon request of both petitioners herein, said attorney prepared, served and filed a brief in behalf of Lee Arenas in said cause upon appeal and argued in behalf of the appellants at the oral hearing thereof.

That said attorney has prepared this petition and the Order to Show Cause to be issued thereon and has prepared a brief upon the law in respect to the issues presented thereby and has been employed to and will represent both petitioners until the conclusion of such proceedings. That the questions with respect to taxation are novel and intricate and the amount of work which said attorney will be required to perform may vary considerably dependent upon the responses to the Order to Show Cause which will be issued upon the petition and the issues raised thereby. That petitioners have no other funds with which to pay and reimburse said attorney and therefore request that a reasonable sum be retained in the registry of the Court pending the final determination of the issues herein raised and to be raised and the performance of the services in their behalf by [19] said attorney to secure payment of his said services.

Wherefore, petitioners respectfully pray:

1. That this Court fix and determine the amount of the funds now on deposit in the registry of the

Court in this action which should be allocated as the funds of Lee Arenas and further fix and determine the amount of such funds which should be allocated as the funds of Richard Brown Arenas and that in connection therewith the Court give consideration to and make allocation of the respective obligations of each of the petitioners for fees, expenses, disbursements and any other costs or obligations which were the lawful obligations of each.

2. That this Court determine that the United States of America has no tax obligation or lien against either of the petitioners and that the funds on deposit in the registry of the Court are not subject to any lien in its favor.

3. That this Court determine that the State of California has no tax obligation or lien against either of the petitioners and that the funds on deposit in the registry of the Court are not subject to any lien in its favor.

4. That this Court order and direct that there be paid out of the funds allocated to petitioner Richard Brown Arenas the approved claims against the estate of Eleuteria Brown Arenas, deceased.

5. That this Court fix and determine such reasonable sum as will secure the payment of advances made and to be made by petitioners' counsel, Irl Davis Brett, Esq., and for his services rendered and to be rendered herein for which payment has not already been made and that such sum as so fixed be

retained in the registry of the Court as security for such payment until the further order of the Court.

6. That the remaining funds be distributed to the petitioners. [20]

7. For such other further and general relief as in equity ought to be granted.

That an Order to Show Cause be issued herein requiring that the United States of America and the State of California, and each of them, be and appear before this Court on such date, time and at such place as the Court shall fix and determine and set forth in said Order to Show Cause, then and there each to show cause why this Court should not make the orders herein prayed for.

Dated:

/s/ IRL D. BRETT,
Attorney for Petitioners.

Duly verified.

[Endorsed]: Filed December 5, 1955. [21]

[Title of District Court and Cause.]

No. 6221-WM Civil

PETITION FOR DETERMINATION OF TAXES, IF ANY, WHICH ARE A LIEN UPON THE FUNDS IN THE REGISTRY OF THE COURT; FOR AN ORDER DIRECTING PAYMENT OF APPROVED CLAIMS AGAINST THE ESTATE OF ELEUTERIA BROWN ARENAS, DECEASED, AND FOR DISTRIBUTION OF FUNDS ON DEPOSIT IN THE REGISTRY OF THE COURT, AND OTHER RELIEF

Comes Now petitioner Richard Brown Arenas and petitions this Honorable Court and alleges as follows:

I.

Petitioner is an enrolled member of the Palm Springs Bank of Mission Indians.

II.

That on the 24th day of February, 1949, petitioner's mother, Eleuteria Brown Arenas, now deceased, received a trust patent to the following described lands which are situated within the Palm Springs Reservation in the City of Palm Springs, County of Riverside, State of California, to wit:

Parcel (a): Lot 50, Section 14, T4S, R4E, S.B.B.&M., comprising 2 acres.

Parcel (b): Tract No. 41 of Section 26, T4S, R4E, S.B.B.&M., comprising 5 acres. [22]

Parcel (c): SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., comprising 40 acres.

That said allotments were made effective and said trust patent was issued as effective nunc pro tunc so as to vest and become effective as of May 9, 1927, which was the date finally adjudicated as between the United States of America and allottee Eleuteria Brown Arenas as the date of the selection made for her for allotment of said lands.

III.

That attorneys John W. Preston, Oliver O. Clark and David D. Sallee represented said Eleuteria Brown Arenas in the commencement of the litigation in this proceeding entitled Eleuteria Brown Arenas, Plaintiff, vs. United States of America, Defendant, and numbered 6221-WM Civil. That on March 2, 1951, a judgment and supplemental decree was entered herein adjudging that said attorneys were jointly entitled to a judgment for legal services rendered by them in the obtaining of the allotment and trust patent described in paragraph II hereof in the principal amount of \$25,750.00 together with costs in the amount of \$15.00 and that a lien in the nature of a charging lien be impressed upon said lands and the whole thereof to secure the payment of said judgment. That said judgment was appealed by the United States of America to the Court of Appeals for the Ninth Circuit and was amended by reducing the principal amount of the judgment from \$25,750.00 to \$20,750.00. That as so amended, such judgment became final.

IV.

That Eleuteria Brown Arenas died intestate in Riverside County, California, on April 26, 1954, and the probate of her estate and the determination of her heirs at law was vested by law in and was determined by the Secretary of the Interior of the United States through his legally appointed Examiner of Inheritance, [23] J. Lee Rawhauser. That said determination was made pursuant to the provisions of Section 1 of the Act approved June 25, 1910, 36 Stat. 855; Title 25, U.S.C.A., Section 372. That said Examiner of Inheritance on June 7, 1954, found and determined that petitioner Richard Brown Arenas was the surviving son of and sole heir at law of Eleuteria Brown Arenas and entitled to inherit her allotted lands including those which are described in paragraph II hereof. That said Order Determining Heirs approved and ordered paid the following claims payable to the following named creditors in the following amounts:

Wiefels and Son, Funeral Directors, Box 359, Palm Springs, California	\$ 463.66
Mrs. Terry M. Lamb, 3826 East First Street, Long Beach 3, California	9,620.00
plus 6% interest from May 1, 1954	
Bank of America, National Trust and Sav- ings Association, Palm Springs, Califor- nia (for promissory note dated February 10, 1954)	300.00
plus 6% interest from February 10, 1954	

Bank of America, National Trust and Savings Association, Palm Springs, California, balance due on promissory note dated January 7, 1954, in amount of \$321.60; present balance due unknown, since Sacramento Area Office has made payments thereon subsequent to decedent's death	
Hatchett's Market, Palm Springs, California	6.18
Desert Lock and Key, Palm Springs, California	15.51
California Electric Power Company, Palm Springs, California	16.39
Palm Springs Water Company, Palm Springs, California	4.60
Music and Appliance Company, Palm Springs, California	28.62

That since the allowance of the claim in favor of Mrs. Terry M. Lamb, payments have been made by the Indian Office of the United States out of funds accruing in favor of petitioner Richard Brown [24] Arenas so that the unpaid balance of principal is now the sum of \$8,657.96 plus interest at 6% per annum from October 21, 1955, until paid. That in addition to the accrual of interest, said claim arises out of a purchase contract of an improved residential structure and may be subject to forfeiture as against petitioner Richard Brown Arenas if not paid in accordance with the existing contract between Mrs. Lamb and said decedent. That for such

reason petitioner Richard Brown Arenas alleges that Mrs. Lamb should have priority payment thereon.

V.

That under compulsion of the judgment, order and decree in this cause ordering the sale of the lands which are described in paragraph II hereof and in order to avoid the hazard of a possible loss of all of said allotted lands through foreclosure sale, petitioner Richard Brown Arenas consummated five private sales of certain portions of said trust patented lands which he had inherited from his mother which are described as follows:

1. The $S\frac{1}{2}$ of the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., containing five acres, more or less.

2. The $N\frac{1}{2}$ of the $NE\frac{1}{4}$ of the $SW\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., containing five acres, more or less.

3. Beginning at a point on a right-of-way common to Camino Real and La Verne Way which is 40' North along the center section line from the center section $\frac{1}{4}$ corner of Section 26, T4S, R4E, S.B.B.&M., County of Riverside, California, thence North along the center section line 618'; thence South $89^{\circ} 54''$ East 993.0' to the Westerly right-of-way of La Verne Way; thence South $53^{\circ} 50''$ West 893.7' along the Westerly right-of-way of La Verne Way; thence Westerly along [25] a 464.9' radius curve on La Verne Way to the point of beginning, containing $7\frac{3}{4}$ acres, more or less.

4. Beginning at a point 329' south of the NE corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ (NE 1/16C) Section 26, T4S, R4E, proceed west 660', thence south 329', thence east 333' to north right-of-way of La Verne Way, thence north 53° 53' east 407.9' along north right-of-way of said street, thence north 88.6' to point of beginning, containing 4.08 acres, more or less.

5. The N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 26, T4S, R4E, S.B.B.&M., comprising five acres.

That there was deposited in the registry of this Court as the net proceeds of such sales the sum of \$40,285.60.

VI.

That by subsequent orders, judgments and decrees, this Court has caused to be paid and disbursed from said sum of \$40,285.60, the total sum of \$24,765.00, which disbursements have fully satisfied, paid and discharged the judgment and lien of attorneys Preston, Clark and Sallee except as to their claim for accrued interest. That petitioner Richard Brown Arenas, the United States of America and said attorneys Preston, Clark and Sallee have stipulated herein and this Court has ordered that the payment of interest upon the judgment in favor of said attorneys shall be governed by the final decree of the Court of Appeals for the Ninth Circuit in the appeal now pending in this Court as No. 14555 entitled United States of America, et. al., vs. Preston, et. al., and pursuant thereto

this Court has ordered and required that the sum of \$6,301.40 be retained in the registry to secure payment of such interest if the same shall be required to be paid. That such disbursements have also fully paid, satisfied and discharged a fee for services rendered by counsel for petitioner [26] Richard Brown Arenas, Irl Davis Brett, Esq., for procuring and consummating such private sales including the legal steps taken in this cause to obtain authorization and approval thereof and all costs of suit in this cause to date.

VII.

That in order to consummate the private sales heretofore described and set forth, petitioner Richard Brown Arenas obtained an order and judgment of this Court approving such sales by the terms of which it was provided, inter alia, that the lien of the judgment and supplemental decree in favor of attorneys Preston, Clark and Sallee and all other lawful and outstanding liens upon the lands so sold were transferred from said lands to the funds deposited in the registry of the Court. That in order to consummate said sales it was necessary that petitioner Richard Brown Arenas obtain and supply to the purchasers policies of title insurance issued by private title insurance companies operating and doing business in the County of Riverside, California, and in order to obtain and supply such policies of title insurance it was necessary for petitioner Richard Brown Arenas to and he did obtain releases of any claimed estate tax lien of the United States of America affecting the lands described in para-

graph II hereof which he had inherited from his deceased mother, Eleuteria Brown Arenas, together with a release of the State Inheritance Tax lien, if any, in favor of the State of California upon said lands, conditioned that said liens, if any there were, be transferred and affixed to the funds deposited in the registry of the Court.

VIII.

That petitioner is informed and believes and upon such ground alleges that the United States of America claims that the right of petitioner Richard Brown Arenas to succeed to his mother's interest in the lands described in paragraph II hereof is subject to an estate tax under allegedly applicable laws of the United States. [27] That if such claim is established, it is a lien upon the funds now on deposit in the registry of the Court pursuant to the judgments, orders and decrees heretofore made by this Court in authorizing and approving the sales hereinbefore described. That petitioner denies that any such estate tax is leviable or lawful and alleges that since such succession right is solely and exclusively derived through the General Allotment Act of 1887 (the Act approved February 8, 1887, chapter 119, paragraph 5; 24 Stat. 389; Title 25 U.S.C., Section 348) and the Mission Indian Act of 1891 (the Act approved January 12, 1891; 26 Stat. 712) both as amended, the right of petitioner to such inherited allotted lands is not derived through general succession but through special suc-

cession in fulfillment of the obligation of the United States that the restricted trust patented property shall be held free of all charge and encumbrance whatsoever, whether voluntary or involuntary, made or incurred by the trust patentee. That the conversion of a portion of such trust patented inherited lands through the sales thereof with the approval of this Court and the United States under compulsion of the decrees of this Court as heretofore described and set forth did not change the trust character of or limitations upon the funds into which they were converted, and which funds are now on deposit in the registry of the Court in this action, and that no succession tax or any other tax by the United States of America could be levied upon or affixed to or has been levied upon or affixed to such trust restricted funds.

IX.

That petitioner is informed and believes and upon such ground alleges that the State of California claims that his right to succeed to his mother's interest in the lands described in paragraph II hereof is subject to an inheritance tax under allegedly applicable laws of said State. That if said claim [28] is established, it is a lien upon the funds now on deposit in the registry of the Court pursuant to the judgments, orders and decrees heretofore made by this Court in authorizing and approving the sales hereinbefore described. That petitioner denies that any such inheritance tax is leviable or lawful and alleges that since such

succession rights are solely and exclusively derived through the General Allotment Act of 1887 (the Act approved February 8, 1887, chapter 119, paragraph 5; 24 Stat. 389; Title 25 U.S.C., Section 348) and the Mission Indian Act of 1891 (the Act approved January 12, 1891; 26 Stat. 712) both as amended, the right of petitioner to such inherited allotted lands is not derived through general succession but through special succession in fulfillment of the obligation of the United States that the restricted trust patented property shall be held free of all charge and encumbrance whatsoever, whether voluntary or involuntary, made or incurred by the trust patentee. That the conversion of a portion of such trust patented inherited lands through the sales thereof with the approval of this Court and the United States under compulsion of the decrees of this Court as heretofore described and set forth did not change the trust character of or limitations upon the funds into which they were converted, and which funds are now on deposit in the registry of the Court in this action, and that no succession tax or any other tax by the State of California could be levied upon or affixed to or has been levied upon or affixed to such trust restricted funds. Petitioner further alleges that the adoption of the laws governing heirship of the State of California as the requirement for inheritance of said allotted trust patented lands under the provisions of the Acts of Congress immediately heretofore referred to and described did not make such lands subject to a State inheritance tax nor make inheritance thereto

subject to the laws of the State of California but that, to the contrary, such adoption was merely a convenient means for the Congress to [29] express its will and was descriptive only of the will of Congress as expressed in such legislation.

X.

That Irl Davis Brett, Esq., has prepared this petition and the Order to Show Cause to be issued thereon and has prepared a brief upon the law in respect to the issues presented thereby and has been employed to and will represent petitioner until the conclusion of such proceedings. That the questions with respect to taxation are novel and intricate and the amount of work which said attorney will be required to perform may vary considerably, dependent upon the responses to the Order to Show Cause which will be issued upon the petition and the issues raised thereby. That petitioner has no other funds with which to pay or reimburse said attorney and therefore requests that a reasonable sum be retained in the registry of the Court pending final determination of the issues herein raised and to be raised and the performance of such legal services in his behalf by said attorney to secure payment of his services.

Wherefore, petitioner respectfully prays:

1. That this Court determine that the United States of America has no tax obligation or lien against petitioner and that the funds on deposit in

the registry of the Court in this cause are not subject to any lien in its favor.

2. That this Court determine that the State of California has no tax obligation or lien against petitioner and that the funds on deposit in the registry of the Court in this cause are not subject to any lien in its favor.

3. That this Court order and direct that there be paid out of the funds allotted to petitioner Richard Brown Arenas the approved claims against the estate of Eleuteria Brown Arenas, deceased. [30]

4. That this Court fix and determine such reasonable sum as will secure the payment of advances made and to be made by petitioner's counsel, Irl Davis Brett, Esq., and for his services rendered and to be rendered herein for which payment has not already been made and that such sum as so fixed be retained in the registry of the Court as security for such payment until the further order of the Court.

5. That the remaining funds be distributed to petitioner.

6. For such other and further and general relief as in equity ought to be granted.

That an Order to Show Cause be issued herein requiring that the United States of America and the State of California, and each of them, be and appear before this Court on such date, time and at such place as the Court shall fix and determine and

set forth in said Order to Show Cause, then and there each to show cause why this Court should not make the orders herein prayed for.

Dated:

/s/ IRL D. BRETT,
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed December 5, 1955. [31]

[Title of District Court and Cause.]

No. 1321-WM Civil

ANSWER

Comes Now the respondent Robert C. Kirkwood, Controller of the State of California, and answers as follows:

I.

Admits each and every allegation set forth in paragraphs I, II, and V.

II.

Respondent has no information or belief upon the subject sufficient to enable him to answer and on this ground denies each and every allegation set forth in paragraphs IV, VI, VII, VIII, IX, X, XII, XIV, XV, XVII, XVIII, XIX, XX, XXII, and XXIII.

III.

Admits all the allegations of paragraph III except as to the marital status of Guadalupe Rice Arenas and Lee Arenas and as to those allegations lacks information or belief upon the subject sufficient to enable the respondent to answer and on this ground denies each and every allegation relating to marital status. [32]

IV.

As to paragraph VI admits that Guadalupe Rice Arenas died but lacks information or belief upon the subject sufficient to answer the other allegations of said paragraph and on this ground denies each and every other allegation set forth in said paragraph VI.

V.

As to paragraph XI admits that the proceeds of sales of certain lands were deposited in the registry of this Court but lacks information or belief upon the subject sufficient to enable the respondent to answer and on this ground denies each and every other allegation in paragraph XI.

VI.

As to paragraph XIII admits that Eleuteria Brown Arenas died in Riverside County on April 26, 1954, but lacks information or belief upon the subject sufficient to enable him to answer as to the other allegations set forth in said paragraph XIII and on this ground denies each and every other allegation set forth in said paragraph XIII.

VII.

As to paragraph XVI admits the allegation that the petitioners obtained releases of the inheritance tax lien on the lands held by the petitioners, on condition that said lien be transferred and affixed to the funds deposited in the registry of the Court and as to the other allegations of said paragraph the respondent lacks information or belief upon the subject sufficient to enable respondent to answer and on this ground denies each and every other allegation set forth in said paragraph XVI.

VIII.

As to paragraph XXI admits that an inheritance tax is due the State of California by reason of the death of Guadalupe Rice Arenas and by the death of Eleuteria Brown Arenas and that said [33] taxes are a lien upon the funds now on deposit in this Court but lacks information or belief upon the subject to enable respondent to answer and on this ground denies each and every other allegation set forth in said paragraph XXI.

Wherefore, respondent respectfully prays:

1. That this Court determine that a lien for inheritance taxes due to the State of California exists upon the moneys now on deposit in the registry of this Court by reason of the death of Guadalupe Rice Arenas and Eleuteria Brown Arenas.

2. For such other further and general relief as in equity ought to be granted.

Dated: January 31, 1956.

JAMES W. HICKEY,
WALTER H. MILLER, and
VINCENT J. McMAHON;

By /s/ WALTER H. MILLER,
Attorneys for Robert C. Kirkwood, Controller of
the State of California.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed January 31, 1956. [34]

[Title of District Court and Cause.]

No. 6221—WM Civil

ANSWER

Comes Now the respondent Robert C. Kirkwood, Controller of the State of California, and answers as follows:

I.

Admits each and every allegation set forth in paragraphs I and II.

II.

Respondent has no information or belief upon the subject sufficient to enable him to answer and on this ground denies each and every allegation set forth in paragraphs III, VI, VIII, and X.

III.

As to paragraph IV admits that Eleuteria Brown Arenas died in Riverside County, on April 26, 1954, but lacks information or belief upon the subject sufficient to enable him to answer as to the other allegations set forth in said paragraph IV and on this ground denies each and every other allegation set forth in [36] said paragraph IV.

IV.

As to paragraph V admits that the proceeds of sales of certain lands were deposited in the registry of this Court but lacks information or belief upon the subject sufficient to enable the respondent to answer and upon this ground denies each and every other allegation in paragraph V.

V.

As to paragraph VII admits the allegation that the petitioners obtained releases of the inheritance tax lien on the lands held by the petitioners on condition that said lien be transferred and affixed to the funds deposited in the registry of the Court and as to the other allegations of said paragraph the respondent lacks information or belief upon the subject sufficient to enable respondent to answer and on this ground denies each and every other allegation set forth in said paragraph VII.

VI.

As to paragraph IX admits that an inheritance tax is due the State of California by reason of the

death of Guadalupe Rice Arenas and Eleuteria Brown Arenas and that said taxes are a lien upon the funds now in the registry of the Court, but lacks information or belief upon the subject sufficient to enable respondent to answer as to the other allegations of said paragraph and on this ground denies each and every other allegation set forth in said paragraph IX.

Wherefore, respondent respectfully prays:

1. That this Court determine that a lien for inheritance taxes due to the State of California exists upon the moneys now on deposit in the registry of this Court by reason of the death of Guadalupe Rice Arenas and Eleuteria Brown Arenas. [37]

2. For such other further and general relief as in equity ought to be granted.

Dated: January 31, 1956.

JAMES W. HICKEY,
WALTER H. MILLER, and
VINCENT J. McMAHON;

By /s/ WALTER H. MILLER,
Attorneys for Robert C. Kirkwood, Controller of
the State of California.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed January 31, 1956. [38]

[Title of District Court and Cause.]

No. 1321—WM Civil

REPLY TO PETITION FOR
DETERMINATION OF TAXES, ETC.

Comes now the defendant, United States of America, by its attorneys, Laughlin E. Waters, United States Attorney, and Richard A. Lavine, Assistant U. S. Attorney, and by way of reply to Plaintiff's Petition for Determination of Taxes, etc., filed December 5, 1955, admits, denies, and alleges as follows:

I.

With reference to Paragraph I, admits the allegations therein.

II.

With reference to Paragraph II, in the Department of Interior schedule of allotments, parcel (a) is described as "block" rather than "lot"; and parcel (b) is described as "lot" rather than "tract." Except as hereinabove set forth, admits the allegations therein.

III.

With reference to Paragraph III, in the Department of [40] Interior schedule of allotments, parcel (a) is described as "block" rather than "lot"; and parcel (b) is described as "lot" rather than "tract." Except as hereinabove set forth, admits the allegations therein.

IV.

With reference to Paragraph IV, admits the allegations therein.

V.

With reference to Paragraph V, admits the allegations therein.

VI.

With reference to Paragraph VI, admits the allegations therein.

VII.

With reference to Paragraph VII, admits the allegations therein.

VIII.

With reference to Paragraph VIII, admits the allegations therein.

IX.

With reference to Paragraph IX, admits the allegations therein.

X.

With reference to Paragraph X, wherever the word "lot" appears, the reference should be to the word "block." That as to the S1½ of Lot 40 in Section 26, the partition of same was made to Richard Brown Arenas after the death of his mother, Eleuteria Brown Arenas, as the heir to the estate of Eleuteria Brown Arenas. Except as stated hereinabove, admits all other allegations therein.

XI.

With reference to Paragraph XI, admits the allegations therein. [41]

XII.

With reference to Paragraph XII, admits the allegations therein.

XIII.

With reference to Paragraph XIII, alleges that the records of the Area Office of the Bureau of Indian Affairs shows that the Examiner of Inheritance allowed two claims of the Bank of America National Trust and Savings Association, one in the amount of \$300.00, plus interest, as set forth in Paragraph XIII, and a second claim based on a promissory note dated January 7, 1954, showing a balance due of \$288.39, both of which claims have been paid. All of the claims set forth in Paragraph XIII have been allowed and paid except the claim of Mrs. Terry M. Lamb. Except as set forth hereinabove, admits the allegations therein.

XIV.

With reference to Paragraph XIV, admits the allegations therein.

XV.

With reference to Paragraph XV, admits the allegations therein.

XVI.

With reference to Paragraph XVI, admits the allegations therein.

XVII.

With reference to Paragraph XVII, admits the allegations therein.

XVIII.

With reference to Paragraph XVIII, admits the allegations therein.

XIX.

With reference to Paragraph XIX, denies that if the right to succession of trust patented Indian lands in the Palm Springs [42] Indian Reservation is taxable by the United States of America, such right to tax is derived from judicial decision made or entered after the death of Guadalupe Rice Arenas. Admits all allegations not denied.

XX.

With reference to Paragraph XX, the office of the Director of Internal Revenue is completing its investigation to determine whether a lien should be asserted against the funds presently deposited in the registry of the court arising because of Federal Estate Taxes that may be due. Attorneys for defendant United States of America, are informed that such determination should be made prior to the date of the hearing of this petition. Defendant respectfully asks leave of court to amend or supplement this reply to petition, in order to set forth at such later time whether the United States of America does or does not assert a lien against the funds presently in the registry of the court.

Except for a determination as to whether the United States may assert a lien, and the extent of any such lien, against the funds presently in the registry of this court, the District Court does not

have jurisdiction in this action to determine whether there is any tax obligation due to the United States by petitioner or other persons arising by reason of the death of Eleuteria Brown Arenas.

XXI.

With reference to Paragraph XXI, defendant United States of America, agrees with the contention of the petition to the extent that no inheritance tax is due to the State of California by reason of the nature of the property transferred by way of inheritance, and that such property transferred is free from state inheritance taxes by virtue of the laws of the United States applicable to such property; and that there is no valid or existing lien of the State of California upon the funds in the registry of the court in this [43] action by virtue of any state inheritance taxes.

XXII.

With reference to Paragraph XXII, defendant does not admit that Mrs. Terry M. Lamb should have priority of payment over taxes, if any, which may be due. Except as set forth hereinabove, admits the other allegations set forth therein.

XXIII.

With reference to Paragraph XXIII, defendant United States of America, has no information or knowledge sufficient to form a belief as to the amount of advances made by attorney for peti-

tioner, Lee Arenas, allegedly in the sum of \$92.38. Defendant takes no position upon the question of additional attorneys' fees at this time, and requests the court that it may reserve any objections to additional attorneys' fees until such time as a petition is presented to the court in which there is set forth the exact amount of fees requested and the nature and amount of work done by attorney for petitioners. Defendant has no objection to the court retaining in the registry of the court a reasonable sum for such attorneys fees, if any, that the court may later determine is due to attorney for petitioners.

XXIV.

Defendant is informed and believes and upon such information and belief alleges as follows: That petitioner Richard Brown Arenas, has been convicted of a felony by the State of California; that subsequent to such conviction he has been released from custody upon parole; that he has violated the conditions of such parole; and by reason thereof he has been reincarcerated in a California penal institution to finish serving his original sentence, and is presently incarcerated.

Defendant United States of America, recommends that any funds due to him not be distributed directly to him at this time, but that such funds be placed in trust for petitioner with the Area [44] Director, Sacramento Office, Bureau of Indian Affairs, as trustee, in a trust account, which trust account for petitioner is already in existence.

Wherefore defendant United States of America, respectfully prays:

1. That this court determine that the State of California has no lien with reference to petitioners, upon the funds deposited in the registry of this court.

2. That the court order and direct that there be paid out of the funds allocated to petitioner Richard Brown Arenas, the approved claim of Mrs. Terry M. Lamb, against the estate of Eleuteria Brown Arenas, deceased.

3. That the remaining funds allocated to petitioner Richard Brown Arenas, be distributed to the Area Director, Sacramento Office, Bureau of Indian Affairs, as trustee, in trust for petitioner Richard Brown Arenas, to be placed in a trust account presently in existence for said petitioner, in accordance with regulations of the Department of the Interior (25 C.F.R., Part 221).

4. That the remaining funds allocated to petitioner Lee Arenas, be distributed to such petitioner.

5. That defendant United States of America, be permitted to amend this reply to assert whether or not it claims any lien against the funds in the registry of the court because of Federal Estate Taxes that may be due.

6. For such other and further relief as may be proper.

Dated: January 31, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney,

By /s/ RICHARD A. LAVINE,
Attorneys for Defendant
United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed February 1, 1956. [45]

[Title of District Court and Cause.]

No. 6221—WM Civil

REPLY TO PETITION FOR
DETERMINATION OF TAXES, ETC.

Comes now the defendant, United States of America, by its attorneys, Laughlin E. Waters, United States Attorney, and Richard A. Lavine, Assistant U. S. Attorney, and by way of reply to Plaintiff's Petition for Determination of Taxes, etc., filed December 5, 1955, admits, denies, and alleges as follows:

I.

With reference to Paragraph I, admits the allegations therein.

II.

With reference to Paragraph II, in the Department of Interior schedule of allotments, parcel (a)

is described as "block" rather than "lot"; and parcel (b) is described as "lot" rather than "tract." Except as hereinabove set forth, admits the allegations therein.

III.

With reference to Paragraph III, admits the allegations [47] therein.

IV.

With reference to Paragraph IV, alleges that the records of the Area Office of the Bureau of Indian Affairs shows that the Examiner of Inheritance allowed two claims of the Bank of America, National Trust and Savings Association, one in the amount of \$300 plus interest, as set forth in Paragraph IV, and a second claim based on a promissory note, dated January 7, 1954, showing a balance due of \$288.39, both of which claims have been paid. All of of the claims set forth in Paragraph IV have been allowed and paid except the claim of Mrs. Terry M. Lamb. The principal due and the amount of interest paid to Mrs. Terry M. Lamb are correctly set forth in the petition. Defendant does not admit that Mrs. Terry M. Lamb should have priority of payment over taxes, if any, which may be due. Except as set forth hereinabove, admits the other allegations set forth in Paragraph IV.

V.

With reference to Paragraph V, line 31, page 4, the bearing should read "South 53° 52", instead of

“South 53° 50” as set forth in the petition. Except as set forth hereinabove, admits the other allegations set forth in Paragraph V.

VI.

With reference to Paragraph VI, admits the allegations therein.

VII.

With reference to Paragraph VII, admits the allegations therein.

VIII.

With reference to Paragraph VIII, the office of the Director of Internal Revenue is completing its investigation to determine whether a lien should be asserted against the funds presently deposited in the registry of the court arising because of [48] Federal Estate Taxes that may be due. Attorneys for defendant, United States of America, are informed that such determination should be made prior to the date of the hearing of this petition. Defendant respectfully asks leave of court to amend or supplement this reply to petition, in order to set forth at such later time whether the United States of America does or does not assert a lien against the funds presently in the registry of the court.

Except for a determination as to whether the United States of America may assert a lien, and the extent of any such lien, against the funds presently in the registry of this court, the District Court does not have jurisdiction in this action to determine whether there is any tax obligation due to the

United States by petitioner, or other persons, arising by reason of the death of Eleuteria Brown Arenas.

IX.

With reference to Paragraph IX, the defendant, United States of America, agrees with the contention of the petition, to the extent that no inheritance tax is due to the State of California by reason of the nature of the property transferred by way of inheritance, and that such property transferred is free from state inheritance taxes by virtue of the laws of the United States applicable to such property; and that there is no valid or existing lien of the State of California upon the funds in the registry of the court in this action by virtue of any state inheritance taxes or other cause whatsoever.

X.

With reference to Paragraph X, defendant United States of America, takes no position upon the question of additional attorneys' fees at this time, and requests the court that it may reserve any objections to additional attorneys' fees until such time as a petition is presented to the court in which there is set forth the exact amount of fees requested, and the nature and amount [49] of work done by attorney for petitioner. Defendant has no objection to the court retaining in the registry of the court a reasonable sum for such attorney fees, if any, that the court may later determine is due to attorney for petitioner.

XI.

Defendant is informed and believes and upon such information and belief alleges as follows: That petitioner Richard Brown Arenas, has been convicted of a felony by the State of California; that subsequent to such conviction he has been released from custody upon parole; that he has violated the conditions of such parole; and by reason thereof he has been reincarcerated in a California penal institution to finish serving his original sentence, and is presently incarcerated.

Defendant United States of America, recommends that any funds due to him not be distributed directly to him at this time, but that such funds be placed in trust for petitioner with the Area Director, Sacramento Office, Bureau of Indian Affairs, as trustee, in a trust account, which trust account for petitioner is already in existence.

Wherefore defendant United States of America, respectfully prays:

1. That this court determine that the State of California has no lien with reference to petitioner, upon the funds deposited in the registry of this court.

2. That this court order and direct that there be paid out of the funds allotted to petitioner Richard Brown Arenas, the approved claim of Mrs. Terry M. Lamb, against the estate of Eleuteria Brown Arenas, deceased.

3. That the remaining funds be distributed to the Area Director, Sacramento Office, Bureau of Indian Affairs, as trustee in trust for petitioner Richard Brown Arenas, to be placed in a trust account presently in existence for said petitioner, in [50] accordance with existing regulations of the Department of the Interior (25 C.F.R., Part 221).

4. That defendant United States of America, be permitted to amend this reply to assert whether or not defendant claims any lien against the funds in the registry of this court because of Federal Estate Taxes that may be due.

5. For such other and further relief as may be proper.

Dated: January 31, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney;

By /s/ RICHARD A. LAVINE,
Attorneys for Defendant
United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed February 1, 1956. [51]

[Title of District Court and Cause.]

No. 1321—WM Civil

AMENDED ANSWER, STIPULATION
THEREON, AND ORDER THEREON

Comes Now the respondent Robert C. Kirkwood, Controller of the State of California, and files as follows his amended answer to supersede entirely the answer previously filed herein on January 31, 1956, and admits, denies and alleges as follows:

I.

With reference to Paragraph I admits the allegations therein.

II.

With reference to Paragraph II admits the allegations therein.

III.

Admits the allegations of Paragraph III except as to the marital status of Guadalupe Rice Arenas and Lee Arenas and as to those allegations lacks information or belief upon the subject sufficient to enable the respondent to answer and on this ground denies each and every allegation as to marital status. [53]

IV.

With reference to Paragraph IV admits the allegations therein.

V.

With reference to Paragraph V admits the allegations therein.

VI.

With reference to Paragraph VI admits that Guadalupe Rice Arenas died, but lacks information or belief upon the subject sufficient to answer whether she died intestate; Denies that the probate of her estate and the determination of her heirs was vested by law in the Secretary of Interior; Denies that Eleuteria Brown Arenas was the adopted daughter of petitioner Lee Arenas and the said Guadalupe Rice Arenas within the meaning of Section 13307 of the Revenue and Taxation Code of California so as to qualify her as a Class A transferee; Admits that the Secretary of Interior through his Examiner made a determination and that his findings were as set forth in said Paragraph VI but denies that such findings are binding upon the State of California in determining the inheritance taxes due to the State of California by reason of the death of Guadalupe Rice Arenas and Eleuteria Brown Arenas.

VII.

With reference to Paragraph VII admits the allegations therein.

VIII.

With reference to Paragraph VIII admits the allegations therein.

IX.

With reference to Paragraph IX admits the allegations therein.

X.

With reference to Paragraph X admits the allegations [54] therein.

XI.

With reference to Paragraph XI admits the allegations therein.

XII.

With reference to Paragraph XII admits the allegations therein.

XIII.

With reference to Paragraph XIII admits that Eleuteria Brown Arenas died in Riverside County, on April 26, 1954, but lacks information or belief upon the subject sufficient to determine if she died intestate and on this ground denies that she died intestate; Denies that the probate of her estate and the determination of her heirs was vested by law in the Secretary of Interior; Admits that the Secretary of Interior through his Examiner made a determination and that he determined the facts as alleged in Paragraph XIII but denies that such findings are binding upon the State of California in determining the inheritance taxes due to the State of California by reason of the death of Guadalupe Rice Arenas and Eleuteria Brown Arenas.

XIV.

With reference to Paragraph XIV admits the allegations therein.

XV.

With reference to Paragraph XV admits the allegations therein.

XVI.

With reference to Paragraph XVI admits the allegations therein.

XVII.

With reference to Paragraph XVII admits the allegations therein except as to whether Eleuteria Brown Arenas was the mother [55] of Richard Brown Arenas and whether Guadalupe Rice Arenas was the grandmother of the said Richard Brown Arenas and as to these allegations lacks information or belief upon the subject sufficient to answer and on this ground denies said allegations.

XVIII.

With reference to Paragraph XVIII admits the allegations therein except as to whether Eleuteria Brown Arenas was the mother of Richard Brown Arenas and whether Guadalupe Rice Arenas was the grandmother of the said Richard Brown Arenas and as to these allegations lacks information or belief upon the subject sufficient to answer and on this ground denies said allegations.

XIX.

With reference to Paragraph XIX denies that the right of the State of California to tax the trust patented Indian lands in the Palm Springs Reservation is derived from judicial decisions made or entered after the death of Guadalupe Rice Arenas; Denies that all administrative action through which the allotment was approved for and a trust patent was issued to the heirs and devisees of Guadalupe Rice Arenas occurred and took place after her death; Denies that at the time of Guadalupe Rice

Arenas' death the selections for allotments of Palm Springs Indian Reservation lands which had been made by various enrolled members in 1923 and 1927 including the selection made by Guadalupe Rice Arenas had been rejected by the Secretary of Interior; Admits the other allegations therein.

XX.

With reference to Paragraph XX lacks information or belief upon the subject sufficient to answer the allegations therein and upon this ground denies the allegations therein.

XXI.

With reference to Paragraph XXI admits and alleges that inheritance taxes are due the State of California by reason of the [56] death of Guadalupe Rice Arenas and by reason of the death of Eleuteria Brown Arenas and that said taxes are a lien upon the funds now on deposit in this Court. As to the other allegations of said Paragraph XXI lacks information or belief upon the subject sufficient to enable the respondent to answer and on this ground denies each and every other allegation of said paragraph.

XXII.

With reference to Paragraph XXII lacks information or belief upon the subject sufficient to answer the allegations thereof and upon this ground denies the allegations set forth in said Paragraph XXII.

XXIII.

With reference to Paragraph XXIII lacks information or belief upon the subject sufficient to answer the allegations thereof and upon this ground denies each and every allegation set forth in said Paragraph XXIII.

Wherefore, respondent respectfully prays:

1. That this Court determine that a lien for inheritance taxes due to the State of California exists upon the moneys now on deposit in the registry of this Court by reason of the deaths of Guadalupe Rice Arenas and Eleuteria Brown Arenas.

2. For such other further and general relief as in equity ought to be granted.

Dated: February 20, 1956.

JAMES W. HICKEY,
WALTER H. MILLER, and
VINCENT J. McMAHON;

By /s/ VINCENT J. McMAHON,
Attorneys for State Controller.

STIPULATION

It is hereby agreed and stipulated by and between petitioners Lee Arenas and Richard Brown Arenas, and defendant Robert C. Kirkwood, the Controller of the State of California, by their respective counsel of record, that said defendant may file the above Amended Answer to Petition for Determination of Taxes, etc., subject to approval of court.

Dated: February 20th, 1956.

/s/ IRL D. BRETT,
Attorney for Petitioners.

JAMES W. HICKEY,
WALTER H. MILLER, and
VINCENT J. McMAHON;

By /s/ VINCENT J. McMAHON,
Attorneys for State Controller.

Order

The foregoing stipulation is approved, and defendant Robert C. Kirkwood, the Controller of the State of California, may file his Amended Answer to Petition for Determination of Taxes, etc.

Dated: February 20, 1956.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed February 20, 1956. [58]

[Title of District Court and Cause.]

No. 6221—WM Civil

AMENDED ANSWER, STIPULATION THEREON, AND ORDER THEREON

Comes Now the respondent Robert C. Kirkwood, Controller of the State of California, and files as follows his amended answer to supersede entirely

the answer previously filed herein on January 31, 1956, and admits, denies and alleges as follows:

I.

With reference to Paragraph I admits the allegations therein.

II.

With reference to Paragraph II admits the allegations therein.

III.

With reference to Paragraph III admits the allegations therein.

IV.

With reference to Paragraph IV admits that Eleuteria Brown Arenas died in Riverside County, on April 26, 1954, but lacks [59] information or belief upon the subject sufficient to determine if she died intestate and on that ground denies that she died intestate; Denies that the probate of her estate and the determination of her heirs was vested by law in the Secretary of Interior; Admits that the Secretary of Interior through his Examiner made a determination and that he determined the facts as alleged in Paragraph IV but denies that such findings are binding upon the State of California in determining the inheritance taxes due to the State of California by reason of the death of Guadalupe Rice Arenas and Eleuteria Brown Arenas; As to the other allegations of said paragraph lacks information or belief upon the subject sufficient to answer and upon this ground denies the other allegations of said Paragraph IV.

V.

With reference to Paragraph V admits the allegations thereof except as to the relationship of Richard Brown Arenas to Eleuteria Brown Arenas and as to this allegation respondent lacks information or belief upon the subject sufficient to answer and upon this ground denies the relationship between said parties as being son and mother.

VI.

With reference to Paragraph VI admits the allegations therein.

VII.

With reference to Paragraph VII admits the allegations therein.

VIII.

With reference to Paragraph VIII lacks information or belief upon the subject sufficient to enable respondent to answer and upon such ground denies the allegations of Paragraph VIII.

IX.

With reference to Paragraph IX admits and alleges that [60] inheritance taxes are due the State of California by reason of the death Eleuteria Brown Arenas and that said taxes are a lien upon the funds now on deposit in this Court; As to the other allegations of said Paragraph IX respondent lacks information or belief upon the subject sufficient to answer and upon this ground denies each and every other allegation of said Paragraph.

X.

With reference to Paragraph X lacks information or belief upon the subject sufficient to answer and upon this ground denies the allegations of said Paragraph X.

Wherefore, respondent respectfully prays:

1. That this Court determine that a lien for inheritance taxes due to the State of California exists upon the moneys now on deposit in the registry of this Court by reason of the death of Guadalupe Rice Arenas and Eleuteria Brown Arenas.

2. For such other further and general relief as in equity ought to be granted.

Dated: February 20, 1956.

JAMES W. HICKEY,
WALTER H. MILLER,
VINCENT J. McMAHON,

By /s/ VINCENT J. McMAHON,
Attorneys for State Controller.

STIPULATION

It is hereby agreed and stipulated by and between petitioner Richard Brown Arenas, and defendant Robert C. Kirkwood, the Controller of the State of California, by their respective counsel of record, that said defendant may file the above Amended Answer to Petition for Determination of Taxes, etc., subject to approval of court.

Dated: February 20, 1956.

/s/ IRL D. BRETT,
Attorney for Petitioner.

JAMES W. HICKEY,
WALTER H. MILLER,
VINCENT J. McMAHON,

By /s/ VINCENT D. McMAHON,
Attorneys for State
Controller.

ORDER

The foregoing stipulation is approved, and defendant Robert C. Kirkwood, the Controller of the State of California, may file his Amended Answer to Petition for Determination of Taxes, etc.

Dated: February 20, 1956.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed February 20, 1956. [62]

[Title of District Court and Cause.]

No. 1321-WM Civil

NOTICE OF PENDENCY OF OTHER ACTION

Comes now the defendant United States of America, by its attorneys, Laughlin E. Waters, United

States Attorney; and Richard A. Lavine, Assistant U. S. Attorney; and in accordance with Rule 35 of Local Rules—Southern District of California, states as follows:

1. There has been filed in the Superior Court of the State of California, in and for the County of Riverside, a Petition for Determination of Inheritance Tax in the matter of Guadalupe Rice Arenas, Deceased, by Robert C. Kirkwood, as Controller of the State of California, Petitioner, vs. Lee Arenas and Eleuteria Brown Arenas, Respondents, No. Indio 906, to appoint an Inheritance Tax Appraiser to determine facts concerning certain alleged transfers of property, and to fix the tax due from Lee Arenas and Eleuteria Brown Arenas pursuant to the provisions of Article 2, Chapter 11, of the Inheritance Tax Law of California. [63]

2. There has been filed in the Superior Court of the State of California, in and for the County of Riverside, a Petition for Determination of Inheritance Tax in the matter of Eleuteria Brown Arenas, Deceased, by Robert C. Kirkwood, as Controller of the State of California, Petitioner, vs. Richard Brown Arenas, Respondent, No. Indio 907, to appoint an Inheritance Tax Appraiser to determine facts concerning certain alleged transfers of property, and to fix the tax due from Richard Brown Arenas pursuant to the provisions of Article 2, Chapter 11, of the Inheritance Tax Law of California.

Such documents were filed in said Superior Court on April 20, 1956.

Dated: April 26, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney;

By /s/ RICHARD A. LAVINE,
Attorneys for Defendant
United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed April 26, 1956. [64]

[Title of District Court and Cause.]

No. 6221-WM Civil

NOTICE OF PENDENCY
OF OTHER ACTION

Comes now the defendant United States of America, by its attorneys, Laughlin E. Waters, United States Attorney, and Richard A. Lavine, Assistant U. S. Attorney, and in accordance with Rule 35 of Local Rules—Southern District of California, states as follows:

1. There has been filed in the Superior Court of the State of California, in and for the County of

Riverside, a Petition for Determination of Inheritance Tax in the matter of Guadalupe Rice Arenas, Deceased, by Robert C. Kirkwood, as Controller of the State of California, Petitioner, vs. Lee Arenas and Eleuteria Brown Arenas, Respondents, No. Indio 906, to appoint an Inheritance Tax Appraiser to determine facts concerning certain alleged transfers of property, and to fix the tax due from Lee Arenas and Eleuteria Brown Arenas pursuant to the provisions of Article 2, Chapter 11, of the Inheritance Tax Law of California. [66]

2. There has been filed in the Superior Court of the State of California, in and for the County of Riverside, a Petition for Determination of Inheritance Tax in the matter of Eleuteria Brown Arenas, Deceased, by Robert C. Kirkwood, as Controller of the State of California, Petitioner, vs. Richard Brown Arenas, Respondent, No. Indio 907, to appoint an Inheritance Tax Appraiser to determine facts concerning certain alleged transfers of property, and to fix the tax due from Richard Brown Arenas pursuant to the provisions of Article 2, Chapter 11, of the Inheritance Tax Law of California.

Such documents were filed in said Superior Court on April 20, 1956.

Dated: April 26, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,

Assistant U. S. Attorney,

By /s/ RICHARD A. LAVINE,

Attorneys for Defendant

United States of America.

Affidavit of service by mail attached.

[Endorsed]: Filed April 26, 1956. [67]

United States District Court for the Southern
District of California, Central Division
No. 1321-WM Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 6221-WM Civil

ELEUTERIA BROWN ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OF DECISION

IRL DAVIS BRETT, ESQUIRE.

Attorney for Plaintiff and Petitioner Lee
Arenas, and Petitioner Richard Brown
Arenas.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,

Assistant United States Attorney;

Attorneys for Defendant United States of
America.

JAMES W. HICKEY,

WALTER H. MILLER, and

VINCENT J. McMAHON,

Attorneys for Claimant Robert C. Kirkwood,
Controller of the State of California.

EDMUND G. BROWN,

Attorney General;

JAMES C. MAUPIN,

Deputy Attorney General;

Attorneys for Claimants, The People of
the State of California, and the Fran-
chise Tax Board of the State of Cali-
fornia. [70]

Mathes, District Judge.

The State of California seeks to impress upon certain funds on deposit in the Registry of this Court a lien for alleged inheritance taxes claimed to be due the State, "by reason of the death of Guadalupe Rice Arenas (wife of Lee Arenas) and by reason of the death of Eleuteria Brown Arenas (adopted daughter of Lee and Guadalupe Arenas) * * *" (Cal. Rev. & T. Code § 13401 et seq.)

The funds in controversy are remnants of larger funds derived from sales, with the consent of the United States (25 U.S.C. § 392), of a portion of the lands within the Palm Springs Reservation of the Agua Caliente Band of Mission Indians previously allotted to Lee Arenas and to the heirs of Guadalupe, meantime deceased, pursuant to § 4 of the Mission Indian Act. (26 Stat. 712 (1891); see: 24 Stat. 388 (1887); 36 Stat. 859 (1910); 39 Stat. 969, 976 (1917).)

The sales were made in proceedings ancillary to these suits for allotments under 25 U.S.C. § 345, in order to provide cash with which to pay allowances made for the fees and expenses of the attorneys who have represented the successful claimants to the Arenas allotments throughout this long litigation. (*Arenas vs. Preston, et al.*, F. 2d (9th Cir. Feb. 23, 1956); *id.* 181 F. 2d 62, 68 (9th [71] Cir. 1950); see: *Arenas vs. United States*, 137 F. 2d 199 (9th Cir. 1943), *rev'd*, 322 U.S. 419 (1944); *id.* on remand, 60 F. Supp. 411 (S.D. Cal., 1945), *aff'd in part and rev'd in part*, 158 F. 2d 730 (9th Cir., 1946), *cert. denied*, 331 U.S. 842 (1947).)

Following the death of Guadalupe, Lee Arenas, as surviving husband, received one-half, and Eleuteria as surviving daughter received one-half, of Guadalupe's allotment. (25 U.S.C. § 372; *Arenas vs. United States*, 197 F. 2d 418 (9th Cir., 1952).)

Upon the death of Eleuteria in 1954, her surviving son, Richard Brown Arenas, was declared pur-

suant to 25 U.S.C. § 372 to have inherited his mother's interest in Guadalupe's allotment.

The State's claim for inheritance taxes is based upon the succession of Lee Arenas as surviving husband of Guadalupe, and Richard as surviving son of Eleuteria, to the allotted lands.

Lee and Richard have filed an ancillary petition in each of these suits, seeking a declaration that no inheritance tax lien exists against the remaining proceeds from the allotted land sales.

The lands so sold were subject to trust patents issued under 25 U.S.C. § 348, which provides that "patents shall be of the legal effect, and declare that the United [72] States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, that the President of the United States may in any case in his discretion extend the period."

In *Arenas vs. Preston, et al.*, *supra*, Judge Stephens observed for the Court that: "The interest of the United States in the allotment will not cease to exist until the 'trust patent' to the prop-

erty is ripened into an unqualified patent * * *” (181 F. 2d at 67.)

And it has recently been held that the proceeds from the sales are held by the United States subject to the same trust as the lands prior to sale. (United States vs. Preston, et al., supra, F. 2d (Feb. 23, 1956); see: Buchanan vs. Alexander, 45 U.S. (4 How.) 19 (1846); cf. F.H.A. vs. Burr, 309 U.S. 242 (1940).)

The United States “does not assert or claim any lien against the funds * * * by reason of any Federal Estate taxes * * *” (Cf. Landman vs. Commissioner, 123 F. 2d 787 [73] (10th Cir. 1941), cert. denied, 315 U.S. 810 (1942).)

The state inheritance taxes here claimed are in the nature of an excise imposed upon the privilege of succeeding to property by inheritance under the law of California. Stebbins vs. Riley, 268 U.S. 137, 140 (1925); Campbell vs. California, 200 U.S. 87 (1906); Magoun vs. Ill. Tr. & Sav. Bank, 170 U.S. 283, 288 (1898); cf: United States Trust Co. vs. Helvering, 307 U.S. 57, 60 (1939); Knowlton vs. Moore, 178 U.S. 41, 47 (1900); Scholey vs. Rew, 90 U.S. (23 Wall.) 331, 346 (1874).)

The Act of Congress which provides for allotment of the Mission Indian lands in trust specifies that the trust shall be for the “use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where

such land is located * * *” (24 Stat. 389 (1887), 25 U.S.C. § 348.)

Thus the Federal statute in effect incorporates by reference the California law as to intestate succession; and so the State law is adopted as Federal law. (Cf. *Uravic vs. Jarka Co.*, 282 U.S. 234, 240 (1931).)

Hence the inheritance of allotted Mission Indian lands held under a trust patent devolves in accordance with, but not under, California law. And intestate succession results under and by force of Act of Congress. (See: 25 U.S.C. § 348, 371- [74] 379.)

Accordingly, the right of petitioners to succeed to Guadalupe's allotment is not dependent upon the law of California, but upon Federal law. This right of succession is the privilege here sought to be taxed.

And as explained in *Mager vs. Grima*, 49 U.S. (8 How.) 490 (1850), “if a State may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.” (49 U.S. at 494.)

But only “the authority which confers it may impose conditions upon it.” (*Magoun vs. Ill. Tr. & Sav. Bank*, supra, 170 U.S. at 288; cf. *Chanler vs. Kelsey*, 205 U.S. 466, 479-482 (1907) (dissenting opinion, Holmes, J.).)

Here "the lands really passed under a law of the United States," and not by California's permission. [Childers v. Beaver, 270 U.S. 555, 559 (1926).]

Until recently it could be stated as a general proposition that Indian lands held under trust patents such as those involved here, are immune from all manner of taxation, in view of the undertaking "that at the expiration of said (trust) period the United States will convey the same by patent to said Indian, or his heirs * * * in fee, discharged of said trust and free of all charge or incumbrance whatsoever * * *" (25 U.S.C. § 348; Board of Comm'rs. vs. Seber, 318 U.S. 705, 716-717 (1943); Heckman vs. United States, 224 U.S. 413 (1912); [75] United States vs. Rickert, 188 U.S. 432 (1903); The New York Indians, 72 U.S. (5 Wall.) 761 (1866); The Kansas Indians, 72 U.S. (5 Wall.) 737 (1866).)

In Oklahoma Tax Comm'n vs. United States, 319 U.S. 598 (1943), upon considering the validity of Oklahoma's imposition of "inheritance taxes * * * upon the transfer of the estates of three deceased members of the Five Civilized Tribes" involving in part "restricted cash and securities held for the Indians by the Secretary of the Interior" (id. at 599, 600), the Supreme Court held that "the transfer of those lands which Congress has exempted from direct taxation by the State are also exempted from estate taxes" (id. at 611), but concluded "upon an examination of both the cases * * * and the statute which imposes the restriction (47 Stat. 777 (1933)), that the restriction, without more,

is not the equivalent of a Congressional grant of estate tax immunity.” (319 U.S. at 601-602.)

Although the Supreme Court makes no mention of it, the scholarly dissent of Circuit Judge Murrah in *Oklahoma Tax Commission* rests largely upon the contention that the property in question devolved not only in accordance with, but also under and by force of Oklahoma law. (*United States vs. Oklahoma Tax Commission*, 131 F. 2d 635, 638-640 (10th Cir. 1942), rev'd *id. supra*, 319 U.S. 598.) [76]

As Judge Murrah expressed it: “(The law of Oklahoma is not merely a guide or criterion, but it creates the right and provides the means and manner of disposition.” (*Id.* 131 F. 2d at 639; see: *Jefferson vs. Fink*, 247 U.S. 288, 290 (1918); *In Re Pryor's Estate*, 199 Okla. 17, 181 P. 2d 979, 982, cert. denied, 332 U.S. 816 (1947); cf. *Blundell vs. Wallace*, 267 U.S. 373 (1925).)

West vs. Oklahoma Tax Commission, 334 U.S. 717 (1948), affirming *Yarbrough vs. Oklahoma Tax Commission*, 200 Okla. 402, 193 P. 2d 1017 (1947), involved “the power of the State of Oklahoma to levy an inheritance tax on the estate of a restricted Osage Indian.” (*Id.* at 718.)

Apparently accepting the view of the Oklahoma court that the property there in question devolved not only in accordance with, but also under and by force of Oklahoma law (*id.* at 722; see 34 Stat. 539 (1906)), the Supreme Court held that Oklahoma had the power to levy an inheritance tax, declaring

that "until Congress has in some affirmative way indicated * * * that the transfer be immune from the inheritance tax liability, the Oklahoma Tax Commission case permits that liability to be imposed. But that case also makes clear that should any of the properties transferred be exempted by Congress from direct taxation they cannot be included in the estate for inheritance tax purposes." (334 U.S. at 727-728.) [77]

Interesting to note at this juncture is the fact that Congress has provided that the Federal statute (25 U.S.C. 348), under which the allotment at bar devolved upon Lee Arenas and Richard, "shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickawaws, Seminoles (the Five Civilized Tribes), and Osage * * * in Oklahoma * * *" 25 U.S.C. § 339; see: *Jefferson vs. Fink*, supra, 247 U.S. at 290; *Stephens vs. Cherokee Nation*, 174 U.S. 445, 447 (1899).)

This fact lends support to the view that *West*, supra, 334 U.S. 717, and *Oklahoma Tax Commission*, supra, 319 U.S. 598, are to be distinguished from the cases at bar upon the ground that in those cases devolution was by force of Oklahoma law, where as here intestate succession occurred by force of Federal statute, 25 U.S.C. § 348.

It is unnecessary, however, to distinguish these decisions, since the cases at bar clearly fall within the above-quoted exception stated in the *West* opinion. For subsequent to the decision in *West*,

upon enacting legislation ceding limited State jurisdiction over civil and criminal actions involving the Indians of California, Congress expressly declared that: "Nothing * * * (herein) shall authorize the alienation, encumberance, or taxation of any real or personal property * * * belonging to any Indian * * * that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States * * *" [78] (67 Stat. 588, 589 (1953), 28 U.S.C. § 1360(b), 18 U.S.C. § 1162(b); cf. *Van Brocklin vs. Tennessee*, 117 U.S. 151 (1886).)

Furthermore, § 6 of the General Allotment Act (25 U.S.C. § 349) provides that: "At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; * * * Provided, that the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent * * * at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed * * * And provided further, that the provisions of sections * * * 348 to 350, inclusive, * * * shall not extend to any Indians in the former Indian Territory." (24 Stat. 390 (1887); 34 Stat. 182 (1906); see *Monson vs. Simonson*, 231 U.S. 341, 345-346 (1913).)

It follows then that the funds at bar are not subject to California's claim of lien for inheritance taxes.

The State also presents a motion to establish a lien for "personal income taxes for the years 1947, 1948 and 1949," [79] allegedly due from Lee Arenas under California's Personal Income Tax Law. (Cal. Rev. & T. Code § 18,882.) There is no showing as to the source of the income sought to be taxed.

Assuming arguendo that the income taxes in question are validly laid, the trust funds here are for reasons already stated immune from the claim of lien. (Squire vs. Capoeman, 350 U.S. (4/23/56); cf: Helvering vs. Producers Corp., 303 U.S. 376 (1938); Superintendent vs. Commissioner, 295 U.S. 418 (1935); Choteau vs. Burnet, 283 U.S. 691 (1931).)

The motion of the State of California filed March 5, 1956, must be denied, as must the prayer of the State's answer to the petition.

Since the petition also involves other claims, it will be restored to the calendar for further hearing. April 27, 1956.

[Endorsed]: Filed April 27, 1956. [80]

United States District Court, Southern District
of California, Central Division

No. 1321-WM Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 6221-WM Civil

ELEUTERIA BROWN ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER DETERMINING THAT
TRUST FUNDS ON DEPOSIT IN THE
REGISTRY OF THE COURT ARE IM-
MUNE FROM CALIFORNIA STATE IN-
COME AND INHERITANCE TAX

The issues which are hereafter determined were
raised by the following pleadings:

Case No. 1321-WM Civil

(1) The verified petition of Lee Arenas and
Richard Brown Arenas in which they prayed, inter

alia, for determination of the taxes, if any, which are a lien upon funds remaining on deposit in the registry of this court in Case No. 1321-WM Civil and an Order to Show Cause directed to the United States of America and to the State of California that each appear before this court and show cause why this court should not: [81]

(a) Determine that the United States of America has no tax obligation or lien against either of the petitioners and that the funds on deposit in the registry of the court are not subject to any lien in its favor, and

(b) That this court determine that the State of California has no tax obligation or lien against either of the petitioners and that the funds on deposit in the registry of the court are not subject to any lien in its favor.

(2) The reply, and amended and supplemental reply, of the United States of America in which it conceded that it has no right of lien for estate taxes of other taxes against the petitioners or the funds on deposit in the registry of the court and joined with the petitioners in asserting that such funds (as restricted Indian trust funds) are immune, by federal law, from California State inheritance taxes;

(3) The answer, and amended answer, of the State of California, by and through Robert C. Kirkwood, as State Controller, in which it is alleged and asserted that such funds in the registry

of the court are subject to inheritance tax liens, in amounts not yet fixed and determined, arising from the successive deaths of Guadalupe Arenas, who was the wife of Lee Arenas and the adoptive grandmother of Richard Brown Arenas, and of Eleuteria Brown Arenas, who was the mother of Richard Brown Arenas, and further alleging that such inheritance taxes became and were liens upon such funds under certain laws of the State of California;

(4) A stipulation as to certain facts executed between the contesting parties;

(5) A motion, upon notice, by the State of California, by and through the Franchise Tax Board thereof, for an order granting a lien upon said funds to secure and enforce payment of an income tax obligation of petitioner Lee Arenas alleged to have arisen under certain laws of the State of California; [82]

(6) Oppositions to said motion by the United States of America and Lee Arenas.

Case No. 6221-WM Civil

(1) The verified petition of Richard Brown Arenas praying, *inter alia*, for determination of the taxes, if any, which are a lien upon funds remaining on deposit in the registry of this court in Case No. 6221-WM Civil and an Order to Show Cause directed to the United States of America and to the State of California that each appear before this court and show cause why this court should not:

(a) Determine that the United States of America has no tax obligation or lien against said petitioner and that the funds on deposit in the registry of the court are not subject to any lien in its favor, and

(b) That this court determine that the State of California has no tax obligation or lien against said petitioner and that the funds on deposit in the registry of the court are not subject to any lien in its favor.

(2) The reply, and amended and supplemental reply, of the United States of America in which it conceded that it has no right of lien for estate taxes or other taxes against said petitioner, or the funds on deposit in the registry of the court and joined with the petitioner in asserting that such funds (as restricted Indian trust funds) are immune, by federal law, from California State inheritance taxes;

(3) The answer, and amended answer, of the State of California, by and through Robert C. Kirkwood, as State Controller in which it is alleged and asserted that such funds are subject to an inheritance tax lien, in an amount not as yet fixed and determined, arising from the death of Eleuteria Brown Arenas, the mother of said petitioner, and under said laws of the State of California; [83]

(4) A stipulation as to certain facts executed between the contesting parties;

Irl Davis Brett appeared as counsel of record for the petitioners in both cases, Laughlin E. Waters,

United States Attorney, and Richard A. Lavine, Assistant United States Attorney, appeared as attorneys for the United States of America, James W. Hickey, Walter H. Miller and Vincent J. McMahon appeared as counsel for Robert C. Kirkwood, Controller of the State of California, and Edmund G. Brown, State Attorney General, and James C. Maupin, Deputy Attorney General, appeared for the People of the State of California and its Franchise Tax Board.

Whereupon, the cause having been briefed, argued and submitted to the court for consideration and decision, the Court finds, concludes the law to be, and makes and enters its order thereon as follows:

Findings of Fact

(1) The funds on deposit in the registry of the court in each of these cases and upon which taxes are sought to be levied and liens therefor imposed and enforced are the remnants of larger funds derived from sales, with the consent of the United States pursuant to Title 25 U.S.C., Section 392, of portions of the lands within the Palm Springs Indian Reservation of the Agua Caliente Band of Mission Indians which in Case No. 1321-WM Civil were previously allotted to petitioner Lee Arenas and to the heirs of Guadalupe, meantime deceased, pursuant to Section 4 of the Mission Indian Act (26 Stat. 712) and which in Case 6221-WM Civil were previously allotted to Eleuteria Brown Arenas,

meantime deceased, pursuant to the same federal statute.

(2) The sales from which said funds were derived were made in proceedings ancillary to these suits for allotments under Title 25 U.S.C., Section 345, in order to provide cash with which to pay allowances made for the fees and expenses of certain attorneys [84] who originally represented Lee Arenas and Eleuteria Brown Arenas as successful claimants to such allotments in these cases.

(3) Following the death of Guadalupe on March 26, 1937, Lee, as surviving husband, received one-half and Eleuteria, as surviving daughter, received one-half of Guadalupe's allotment.

(4) Following the death of Eleuteria on April 26, 1954, petitioner Richard Brown Arenas was declared, pursuant to Title 25, U.S.C., Section 372, to have inherited his mother's allotment together with his mother's interest in Guadalupe's allotment.

(5) The State of California claims inheritance taxes against the funds on deposit in the registry of the Court in Case 1321-WM Civil as against Lee Arenas by virtue of his succession as surviving husband of Guadalupe and further claims inheritance taxes upon the funds on deposit in the registry of the court in both actions as against Richard Brown Arenas as the surviving son of Eleuteria Brown Arenas and adoptive grandson of Guadalupe.

(6) The lands which were sold, and from which the funds on deposit were derived, were subject to

trust patents issued by the United States of America pursuant to Section 4 of the Mission Indian Act (26 Stat. 12) and Title 25 U.S.C., Section 348, and the sales were made under stipulations approved by the United States and orders by this court approving the same which provided that such proceeds were held subject to the same trust as the lands were subject to prior to the sales and that any valid liens then existing and imposed upon the lands which were authorized to be and were sold were transferred to and imposed upon said funds.

(7) The claim of the State of California through its Franchise Tax Board in Case 1321-WM Civil is based upon an alleged claim for unpaid income taxes of petitioner Lee Arenas in the sum of \$269.24, plus allegedly accruing interest, pursuant to Section 18,882 of the California Revenue and Taxation Code by the terms of which, if applicable and enforceable, the State of California is [85] placed in the position of a "money judgment creditor" of petitioner Lee Arenas.

(8) In addition to and except as hereinbefore expressly found, the Court finds that the allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XIV, XV, XVI, XVII, XVIII and XIX of the joint petition of Lee Arenas and Richard Brown Arenas in Case 1321-WM Civil are true.

(9) In addition to and except as hereinbefore expressly found, the Court finds that the allegations

contained in paragraphs I, II, III, V, VI and VII of the petition of Richard Brown Arenas in Case 6221-WM Civil are true.

(10) That, except as otherwise and heretofore found in these findings of fact, the allegations contained in the answer and amended answer of respondent Robert C. Kirkwood as Controller of the State of California, are untrue.

Conclusions of Law

And from the foregoing facts, the Court concludes:

(1) That the funds now on deposit in the registry of the court in cases 1321-WM Civil and 6221-WM Civil are immune and are not subject to California's claim of lien for inheritance taxes as against Lee Arenas or as against Richard Brown Arenas.

(2) That such funds in the registry of the court in Case 1321-WM Civil are not subject to and are immune from the claim of lien by the State of California as against Lee Arenas for personal income taxes.

Order and Decree

Wherefore, by reason of the findings of fact and the conclusions of law heretofore found and made, It Is Ordered, Adjudged and Decreed that:

(1) The remaining funds now on deposit in the registry [86] of the court in Case 1321-WM Civil and Case 6221-WM Civil are not subject to a lien

in favor of the State of California as against Lee Arenas or as against Richard Brown Arenas for California State inheritance taxes and are wholly immune from such taxes;

(2) That the funds now on deposit in the registry of this court in Case 1321-WM Civil are not subject to a lien in favor of the State of California and against Lee Arenas for personal income taxes and are wholly immune therefrom;

(3) That the prayer of the State of California, as set forth in its answer and amended answer in each of said cases for the determination, fixing and enforcement of an inheritance tax upon such funds in said causes and as against Lee Arenas and Richard Brown Arenas be and the same are hereby denied and disallowed.

(4) That the motion of the State of California for the affixing of a lien upon the funds in the registry of the court in Case 1321-WM Civil as against Lee Arenas for enforcement of his alleged liability for unpaid income taxes of the State of California be and the same is hereby denied.

Dated: May 28, 1956.

/s/ WM. C. MATHES,

United States District Judge.

Presented by:

/s/ IRL DAVIS BRETT,

Attorney for Petitioners.

Approved as to form under Rule 7.

LAUGHLIN E. WATERS,
United States Attorney;

By /s/ RICHARD A. LAVINE,
Assistant U. S. Attorney; Attorneys for United
States of America. [87]

Approved as to form under Rule 7.

By /s/ VINCENT J. McMAHON,
Attorney for Robert C. Kirkwood, Controller of
the State of California.

Affidavit of service by mail attached.

Lodged: May 23, 1956.

[Endorsed]: Filed May 29, 1956.

Docketed and entered May 31, 1956. [88]

[Title of District Court and Cause.]

Nos. 1321-WM and 6221-WM

NOTICE OF ENTRY OF JUDGMENT

You are hereby notified that Order determining that funds on deposit in Registry this Court are immune from California State income and inheritance taxes has been docketed and entered this day in the above-entitled case.

Dated: Los Angeles, California, May 31, 1956.

CLERK, U. S. DISTRICT
COURT,

By C. A. SIMMONS,
Deputy Clerk. [90]

[Title of District Court and Cause.]

No. 1321-WM Civil

NOTICE OF APPEAL

You are hereby notified that Robert C. Kirkwood, Controller of the State of California, Claimant herein, hereby appeals from that certain order of this Court docketed and entered herein on May 31, 1956.

Dated: July 27, 1956.

ROBERT C. KIRKWOOD,
Controller of the State of
California;

By /s/ WALTER H. MILLER,
Chief Asst. Inheritance Tax
Attorney;

By /s/ VINCENT J. McMAHON,
Assistant Inheritance Tax At-
torney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 27, 1956. [92]

[Title of District Court and Cause.]

No. 6221-WM Civil

NOTICE OF APPEAL

You are hereby notified that Robert C. Kirkwood, Controller of the State of California, Claimant herein, hereby appeals from that certain order of this court docketed and entered herein on May 31, 1956.

Dated: July 27, 1956.

ROBERT C. KIRKWOOD,
Controller of the State of
California;

By /s/ WALTER H. MILLER,
Chief Asst. Inheritance Tax
Attorney,

By /s/ VINCENT J. McMAHON,
Assistant Inheritance Tax At-
torney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 27, 1956. [95]

[Title of District Court and Cause.]

No. 1321-WM Civil

STATEMENT OF POINTS ON APPEAL

Robert C. Kirkwood, Controller of the State of California, makes the following statement of points upon which he intends to rely on appeal:

1. The district court erred in determining that certain funds on deposit in the registry of said court, derived from the sale of certain lands included in a trust patent issued to the heirs of Guadalupe Arenas on February 24, 1949, are not subject to a lien in favor of the State of California for California State inheritance taxes as against Lee Arenas, Eleuteria Brown Arenas and Richard Brown Arenas.

2. The district court erred in determining that upon the death of Guadalupe Arenas on March 26, 1937, the transfer to her heirs Lee Arenas and Eleuteria Brown Arenas of certain lands held under a trust patent issued to Guadalupe Arenas on February 24, 1949, *nunc pro tunc* May 9, 1927, was not taxable for California State inheritance tax purposes.

/s/ JAMES W. HICKEY,
Chief Inheritance Tax At-
torney;

/s/ WALTER H. MILLER,
Chief Assistant Inheritance
Tax Attorney,

/s/ VINCENT J. McMAHON,
Assistant Inheritance Tax At-
torney.

[Endorsed]: Filed August 3, 1956. [99]

[Title of District Court and Cause.]

No. 6221-WM Civil

STATEMENT OF POINTS ON APPEAL

Robert C. Kirkwood, Controller of the State of California, makes the following statement of points upon which he intends to rely on appeal:

1. The district court erred in determining that certain funds on deposit in the registry of said court, derived from the sale of certain lands included in a trust patent issued to the heirs of Guadalupe Arenas on February 24, 1949, are not subject to a lien in favor of the State of California for California State inheritance taxes as against Lee Arenas, Eleuteria Brown Arenas and Richard Brown Arenas.

2. The district court erred in determining that upon the death of Guadalupe Arenas on March 26, 1937, the transfer to her heirs Lee Arenas and Eleuteria Brown Arenas of certain lands held under a trust patent issued to Guadalupe Arenas on February 24, 1949, nunc pro tunc May 9, 1927, was not

taxable for California State inheritance tax purposes.

3. The district court erred in determining that certain funds on deposit in the registry of said court, derived from the sale of certain lands included in a trust patent issued to Eleuteria Brown Arenas are not subject to a lien in favor of the State of California for California State inheritance taxes as against Richard Brown Arenas. [105]

4. The district court erred in determining that upon the death of Eleuteria Brown Arenas on April 26, 1954, the transfer to her heir Richard Brown Arenas of certain lands held under a trust patent issued to Eleuteria Brown Arenas on February 24, 1949, and of certain lands held under a trust patent issued to Guadalupe Arenas on February 24, 1949, and inherited by Eleuteria Brown Arenas from the said Guadalupe Arenas was not taxable for California State inheritance tax purposes.

/s/ JAMES W. HICKEY,
Chief Inheritance Tax Attorney;

/s/ WALTER H. MILLER,
Chief Assistant Inheritance Tax Attorney,

/s/ VINCENT J. McMAHON,
Assistant Inheritance Tax Attorney.

[Title of District Court and Cause.]

Case Nos. 1321-WM and 6221-WM

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 113, inclusive, contain the original

(In Case No. 1321-WM)

Order to Show Cause;

Petition for Allocation of Funds on Deposit in Registry of the Court;

Answer;

Reply to Petition for Determination of Taxes, etc.;

Amended Answer Stipulation Thereon, and Order Thereon;

Notice of Pendency of other Action;

Notice of Appeal;

Statement of Points on Appeal & Designation of Record on Appeal;

Counter-Designation of Contents of Record Upon Appeal.

(In Case No. 6221-WM)

Order to Show Cause;

Petition for Determination of Taxes, etc.;

Answer;

Reply to Petition for Determination of Taxes, etc.;

Amended Answer Stipulation Thereon, and
Order Thereon;
Notice of Pendency of Other Action;
Notice of Appeal;
Statement of Points on Appeal & Designation
of Record on Appeal;
Counter-Designation of Contents of Record on
Appeal.

(In Both Cases)

Memorandum of Decision;

Findings of Fact, Conclusions of Law & Order;

which, together with a full, true and correct copy of the Notification the Order Determining that Funds on Deposit in Registry this Court are Immune from California State Income and Inheritance Taxes has been docketed and Entered on May 31, 1956, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that the foregoing record fee amounts to \$2.00 and has been paid by appellant.

Witness my hand and seal of the said District Court this 27th day of August, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk.

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15243. United States Court of Appeals for the Ninth Circuit. Robert C. Kirkwood, Controller of the State of California, Appellant, vs. Lee Arenas, Richard Brown Arenas and United States of America, Appellees. Transcript of Record. Appeals From the United States District Court for the Southern District of California, Central Division.

Filed: August 29, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.